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FINISHMASTER, INC.

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

JHONNY PINTO, an individual,
Plaintiff,

v.

FINISHMASTER INC., an Indiana
corporation; and DOES 1-20,
inclusive,
Defendants.

CASE NO. 2:18-CV-10773

**DEFENDANT'S NOTICE OF
REMOVAL OF CIVIL ACTION
FROM STATE COURT
PURSUANT TO 28 U.S.C. §§ 1332,
1441, AND 1446**

[Diversity Jurisdiction]

PLEASE TAKE NOTICE THAT Defendant FinishMaster, Inc.
("FinishMaster") hereby removes this matter from the Los Angeles Superior Court
to the United States District Court for the Central District of California pursuant to
28 U.S.C. §§ 1332, 1441, and 1446. The grounds for removal are set forth below.

Claims Asserted in Operative Complaint

1. On November 13, 2018 Plaintiff Jhonny Pinto ("Plaintiff") filed a

1 complaint in the Superior Court of the State of California for the County of Los
2 Angeles, Case No. 18STCV04593. That action was captioned *JHONNY PINTO, an*
3 *individual v. FINISHMASTER, INC., an Indiana corporation; and DOES 1 through*
4 *20, inclusive*. Plaintiff never served his original Complaint on FinishMaster.

5 2. On November 19, 2018, Plaintiff filed a First Amended Complaint For
6 Damages (“FAC”). In the FAC, Plaintiff asserted claims for: (1) disability
7 discrimination in violation of the Fair Employment and Housing Act (“FEHA”),
8 California Government Code §§ 12940, *et seq.*; (2) retaliation in violation of
9 FEHA; (3) failure to prevent discrimination and retaliation in violation of FEHA;
10 (4) failure to provide reasonable accommodations in violation of FEHA; (5) failure
11 to engage in good faith in the interactive process in violation of FEHA; and (6)
12 wrongful termination in violation of public policy. The FAC was also filed in the
13 Superior Court of the State of California for the County of Los Angeles with the
14 same case number and caption.

15 **Compliance with Statutory Requirements**

16 3. Plaintiff served FinishMaster with his FAC on November 30, 2018.
17 FinishMaster’s removal of this action is timely because it filed the instant Notice of
18 Removal within 30 days of the date Plaintiff served FinishMaster with the pleading
19 setting forth a claim for relief. 28 U.S.C. § 1446(b); Fed. R. Civ. P. 6(a)(1).

20 4. In accordance with 28 U.S.C. § 1446(a), attached hereto as Exhibits
21 1–9 are a “copy of all process, pleadings, and orders served upon [Defendant]” in
22 this action, along with those documents that were filed in the state court action that
23 were not served upon Defendant.

24 5. FinishMaster filed its answer to Plaintiff’s FAC in Los Angeles
25 Superior Court on December 27, 2018. A true and correct copy of that answer is
26 attached as Exhibit 10.

27 6. Pursuant to 28 U.S.C. § 1446(d), FinishMaster will promptly provide
28 written notice of removal of this action to Plaintiff’s counsel and promptly will file

1 a copy of this Notice of Removal and the other necessary documents with the Clerk
2 of the Los Angeles County Superior Court.¹

3 **Venue and Intradistrict Assignment**

4 7. Venue lies in the United States District Court for the Central District
5 of California pursuant to 28 U.S.C. §§ 1391(a) and 1441(a) because the FAC was
6 filed in this District. Pursuant to 28 U.S.C. § 1441(a), this case may properly be
7 removed to the Central District of California because Plaintiff filed this case in the
8 Superior Court of California, County of Los Angeles.

9 **Jurisdiction: Diversity**

10 8. This Court has original jurisdiction over this matter pursuant to 28
11 U.S.C. § 1332 because this is an action between “citizens of different States” and
12 the “matter in controversy exceeds the sum or value of \$75,000, exclusive of
13 interest and costs.” We explain the basis for diversity jurisdiction in the paragraphs
14 that follow.

15 **A. Plaintiff And Defendant Are Citizens Of Different States.**

16 9. Plaintiff alleges that he is a resident of California. (FAC ¶ 2.)
17 Therefore, Plaintiff is a citizen of California for purposes of diversity.

18 10. FinishMaster is, and was at all times relevant to this action, a
19 corporation organized under the laws of Indiana with its principal place of business
20 in Indiana. (Melissa Goldbach Decl. ¶ 3.) Therefore, FinishMaster is a citizen of
21 Indiana for purposes of determining diversity. 28 U.S.C. § 1332(c)(1); *see The*
22 *Hertz Corp. v. Friend*, 130 S. Ct. 1181, 1192-93 (2010).

23 11. All other defendants listed in the caption are fictitious defendants who
24 are ignored for the purposes of a diversity analysis. 28 U.S.C. § 1441(b)(1).

25 12. Because Plaintiff is a citizen of California and FinishMaster is a citizen

26
27 ¹ A courtesy copy of FinishMaster’s “Notice to State Court and Adverse Party of Removal
28 of Civil Action From State Court to United States District Court for the Central District of
California” (without exhibits), to be promptly filed with the Los Angeles County Superior
Court and served on Plaintiff, is attached as Exhibit 11 to this Notice of Removal.

1 of Indiana, complete diversity exists between Plaintiff and FinishMaster. 28 U.S.C.
2 § 1332(a)(1).

3 **B. The Amount In Controversy Exceeds \$75,000.**

4 13. Although FinishMaster does not concede liability in any way,
5 Plaintiff's claims in this action place in controversy an amount in excess of the
6 \$75,000 jurisdictional minimum. *See* 28 U.S.C. § 1332; *see also Fritsch v. Swift*
7 *Transportation Co. of Arizona, LLC*, 899 F.3d 785, 793 (9th Cir. 2018).

8 14. In his FAC, Plaintiff does not allege a specific dollar amount in
9 damages. However, he does assert that he is entitled to general damages, special
10 damages, prejudgment interest, restitution, injunctive relief, punitive damages,
11 attorneys' fees and costs, and post-judgment interest. (FAC, Prayer ¶¶ 1-6.) The
12 aggregate amount in controversy for Plaintiff's claims based on the allegations in
13 the FAC for these elements of damage exceeds \$75,000 as detailed in the
14 paragraphs that follow.

15 i. General and Special Damages.

16 15. Plaintiff seeks general and special damages under the FEHA, (FAC
17 ¶¶ 15-55; Prayer ¶ 1), which includes both back pay and front pay. *See Cloud v.*
18 *Casey*, 76 Cal. App. 4th 895, 909 (Cal. Ct. App. 1999).

19 16. During his tenure at FinishMaster, Plaintiff held a position of a full-
20 time delivery driver. (Melissa Goldbach Decl. ¶ 4). During his last year of
21 employment, Plaintiff worked, on average, 35 hours per week. (*Id.* ¶ 6). At the
22 time of his termination (on or about July 29, 2017), Plaintiff earned \$12 per hour.
23 (*Id.* ¶ 5.) Accordingly, Plaintiff was earning an average of approximately \$420 per
24 week at the time of his termination. (*Id.* ¶ 6.)

25 17. To conservatively analyze the amount in controversy, FinishMaster
26 will assume for purposes of these removal papers that Plaintiff can recover back
27 pay *only* for his wages after July 29, 2017, the date on which Plaintiff alleges he
28 was terminated. (*See* FAC ¶ 24.) FinishMaster is informed and believes that

1 Plaintiff has not found alternative employment at any point after his separation
 2 from FinishMaster because, among other things, Plaintiff does not allege that he has
 3 found alternative employment in his FAC. (*See generally id.*) Accordingly, at the
 4 time this Notice of Removal is filed, December 31, 2018, Plaintiff's lost-back-pay
 5 claim, without accounting for any additional benefits, will exceed **\$31,080**.²
 6 *Simmons v. PCR Technology*, 209 F. Supp. 2d 1029, 1032 (N.D. Cal. 2002)
 7 (utilizing this method for calculating the lost wages prong of the plaintiff's potential
 8 damage award for the purposes of calculating the amount in controversy).

9 18. In addition to seeking lost wages, Plaintiff further seeks to recover
 10 general damages under FEHA. (FAC, Prayer ¶ 1). Among other things, Plaintiff
 11 alleges he has suffered "mental pain and anguish and emotional distress and loss of
 12 earning capacity." (*Id.*) Again, Plaintiff has not articulated in his FAC the precise
 13 dollar amount of his alleged pain, anguish, and emotional distress. In cases alleging
 14 discrimination, damages awarded for emotional distress alone can and routinely do
 15 exceed the \$75,000 jurisdictional minimum established by 28 U.S.C. § 1332(a).
 16 *See e.g., Zhang v. Amer. Gem Seafoods, Inc.*, 339 F.3d 1020 (9th Cir. 2003)
 17 (confirming award in discrimination lawsuit of in excess of \$100,000 in emotional
 18 distress damages); *Espinoza v. County of Orange*, No. 30200800110643, 2009 WL
 19 6323832, at *1 (Cal. Super. Ct. Oct. 8, 2009) (jury award of \$500,000 in emotional
 20 damages against the plaintiff's employer for a case in which the plaintiff alleged
 21 disability discrimination, retaliation, wrongful discharge, and intentional infliction
 22 of emotional distress). Assuming for purposes of removal that Plaintiff's emotional
 23 distress claim is worth only **\$50,000**, the damages Plaintiff seeks for lost wages in
 24 connection with his claims, amount to at least \$81,080, which easily exceeds the
 25 jurisdictional minimum of \$75,000.

26 ii. Punitive Damages.

27 ² Plaintiff's average weekly salary as of July 2017 was \$420 (\$12 per hour multiplied by
 28 35 hours per week). The period of July 29, 2017 to December 31, 2018 equals 74 weeks.
 \$420 multiplied by 74 is \$31,080.

19. Plaintiff further seeks to recover what is often the most lucrative form of relief in a suit of this nature: punitive damages. (FAC ¶¶ 33, 44, 49, 56, 63, 71; Prayer ¶ 5). Because Plaintiff's claims for punitive damages are authorized by statute, they are properly considered when determining whether the amount in controversy meets the jurisdictional threshold. *Bell v. Preferred Life Assurance Soc'y*, 320 U.S. 238, 240 (1943) ("Where both actual and punitive damages are recoverable under a complaint each must be considered to the extent claimed in determining jurisdictional amount."). Punitive damages greatly exceeding \$50,000 have been upheld in discrimination suits that, like this one, were brought under FEHA. *E.g., McGee v. Tucoemas Fed. Credit Union*, 63 Cal. Rptr. 3d 808, 816 (Cal. Ct. App. 2017) (affirming award of \$1.2 million in punitive damages for disability discrimination, retaliation, and other claims brought under FEHA); *Romero vs. Leon Max Inc.*, 2 Trials Digest 13th 21, 2009 WL 5258439 (Cal. Super. Ct. Nov. 2, 2009) (jury award of \$50,000 in punitive damages in case in which the plaintiff claimed she had been discriminated against due to a physical disability, her employer denied her request for accommodation, and terminated her). Assuming for purposes of removal that Plaintiff's punitive damages put in controversy are **\$50,000**, FinishMaster has satisfied the amount in controversy for purposes of diversity when those fees are added to Plaintiff's lost wages or emotional distress damages.

iii. Attorneys' Fees.

20. Finally, Plaintiff seeks to recover statutory attorneys' fees pursuant to FEHA, (FAC ¶¶ 34, 45, 50, 57, 64; Prayer ¶ 6), which amounts are also considered when evaluating the amount in controversy for purposes of determining diversity jurisdiction. *See, e.g., Galt G/S v. JSS Scandinavia*, 142 F.3d 1150, 1156 (9th Cir. 1998) ("[W]here an underlying statute authorizes an award of attorneys' fees, either with mandatory or discretionary language, such fees may be included in the amount in controversy."); *Simmons*, 209 F. Supp. 2d at 1035 (holding that where attorneys'

fees are “recoverable by statute,” fees reasonably anticipated over the life of the litigation are included in the amount in controversy analysis). Attorneys’ fees in cases of this nature, which are taken through trial, often exceed \$75,000. *See e.g., Criswell v. Western Airlines, Inc.*, 709 F.2d 544 (9th Cir. 1983) (confirming award of attorneys’ fees to a successful plaintiff totaling \$313,309 in a discrimination lawsuit). Assuming for purposes of removal that Plaintiff’s counsel will incur attorneys’ fees of only **\$50,000** to prosecute Plaintiff’s claims through trial, which is a significant underestimation of the actual fees at issue, FinishMaster has satisfied the amount in controversy for purposes of diversity when those attorneys’ fees are added to Plaintiff’s lost wages or emotional distress damages.

21. FinishMaster does not concede that Plaintiff has been damaged in any amount or at all, or that he will prevail on any of his claims. If Plaintiff does prevail on his claims, however, FinishMaster conservatively estimates the combined total of lost wages and benefits, emotional distress damages, punitive damages, and attorneys’ fees that may be awarded exceed this Court’s jurisdictional minimum, as is shown by the chart below.

<u>TYPE OF RELIEF SOUGHT</u>	<u>AMOUNT IN CONTROVERSY</u>
Lost Wages	\$31,080
Emotional Distress	\$50,000
Punitive Damages	\$50,000
Attorneys’ Fees:	\$50,000
<u>TOTAL</u>	\$181,080

22. The \$75,000 amount in controversy requirement for diversity jurisdiction is satisfied.

General Statement

23. In alleging the amount in controversy for purposes of removal, FinishMaster does not concede in any way that the allegations in Plaintiff’s FAC

1 are accurate, or that Plaintiff is entitled to compensation for lost wages and
2 retirement and other benefits; monetary damages for emotional distress; punitive
3 damages; or attorneys' fees and costs.

4 24. Based on the allegations above, this action is properly removed to this
5 Court from the Superior Court of the State of California, County of Los Angeles.

6
7 Dated: December 31, 2018.

JONES DAY

8
9 By: s/Amanda Sommerfeld

10 Amanda Sommerfeld

11 Attorney for Defendant
12 FINISHMASTER INC.